

**REMARKS**

Claims 1-18 remain pending in the application. Submitted with this response is a copy of the Affidavit under 37 CFR 1.132 submitted in the September 25, 2003 response to final under 37 CFR 1.116. In a subsequent phone conversation with the Examiner, the Examiner confirmed that the Affidavit submitted on September 25, 2003 was entered in the file. The copy included here is for reference to assist the Examiner.

**I. STATUS OF CLAIMS**

1. Claims 1-7 and 12-14 stand rejected under 35 U.S.C. 102(e) as being anticipated by Razavi et al. (WO 00/77620).
2. Claims 8-11 and 15-18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Razavi et al. (W/O 00/77620) in view of Virtual Router Redundancy Protocol (VRRP).

**II. ISSUES**

- (1) Whether claims 1-7 and 12-14 are anticipated by Razavi et al. (WO 00/77620) under 35 U.S.C. §102(e).
- (2) Whether claims 8-11 and 15-18 are unpatentable over Razavi et al. (WO 00/77620) in view of Virtual Router Redundancy Protocol (VRRP) under 35 U.S.C. §103.

**III. ARGUMENTS****35 U.S.C. §102(e)**

Claims 1-7 and 12-14 stand rejected under 35 U.S.C. 102(e) as being anticipated by Razavi et al. (WO 00/77620, hereinafter Razavi et al.).

Applicants' claims 1-7 and 12-14 call for, among other things, a *vehicle comprising an active network* for communicating data between devices within the vehicle, and a *device disposed within the vehicle and having a vehicle related function*, the device being coupled to the active network.

"A claim is anticipated only if each and every element as set forth in the claim is found either expressly or inherently described in a single prior art reference." Verdegall Bros. V. Union Oil Co. Of California, 814 F.2d 628, 631 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236 (Fed. Cir. 1989). Contrary to Examiner's assertion that all elements are disclosed in Razavi et al., Applicants' claimed elements including a *vehicle comprising an active network* for communicating data between devices within the vehicle, and a *device* disposed within the vehicle and having a *vehicle related function*, the device being coupled to the active network, are not disclosed in Razavi et al., so the rejection is unsupported by the art and should be withdrawn.

Razavi et al. teaches an automobile having network devices coupled to an in-car network (page 3, lines 23-24). Razavi et al. goes on to teach an in-car network that is built around an on-board compute platform (22) where all components of the in-car network are either directly plugged into the compute platform (22) or coupled to it via an Ethernet connection (Figure 2, and page 5, line 38 to page 6, line 2). In addition, Razavi et al. reinforces that all computing for the in-car network goes through a central computing resource by stating that "compute platform 22 is at the center of in-car sub-network 20." (page 7, line 36).

Razavi et al. does not disclose or teach a *vehicle comprising an active network* for communicating data between devices within the vehicle, and a *device* disposed within the vehicle and having a *vehicle related function*, the device being coupled to the active network.

Razavi et al. does not disclose or teach an active network. An active network is fundamentally different from the network disclosed by Razavi et al. and not merely a packet data network (passive network) as disclosed on pages 12-13 of Razavi et al.

Applicants appreciate the telephone interview granted by the Examiner on September 17, 2003. The telephone interview revealed that the Examiner is interpreting "active network" to be any network that is merely operating. Applicants' understand that this may be the broadest possible interpretation that the Examiner might give the term "active network." However, Applicants' respectfully submit that the Examiner's interpretation is not the interpretation given to an "active network" by those skilled in the art. As such, Applicants' are providing, along with this response, a Affidavit under 37 CFR 1.132 affirming by one of the inventors, who is also an expert in the field of computing and networking, that an active network is a network in which the nodes can perform custom operations on the messages that pass through the nodes. An active network does not require a central server or computing

resource. Active network nodes are aware of the contents of the messages transported and can participate in the processing and modification of the messages while they travel through the network. Applicants' further submit that the Affidavit under 37 CFR 1.132 further obviates the Razavi reference and its relevance as prior art.

As explained above, Razavi et al. discloses a passive network that is dependent upon a central compute resource. Razavi et al. does not teach or suggest an active network. Since Razavi et al. does not disclose or teach the claimed limitations of a *vehicle comprising an active network* for communicating data between devices within the vehicle, and a *device* disposed within the vehicle and having a *vehicle related function*, the device being coupled to the active network, Razavi et al. cannot anticipate Applicants' claims 1-7 and 12-14. Therefore, Applicants' respectfully submit that the rejection is improper and should be withdrawn.

Claims 2-12 depend either directly or indirectly from claim 1 and are believed to be allowable over the relied on reference of Miles for at least the same reasons as claim 1.

Claims 14-18 depend either directly or indirectly from claim 13 and are believed to be allowable over the relied on reference of Miles for at least the same reasons as claim 13.

### 35 U.S.C. §103

Claims 8-11 and 15-18 are rejected under 35 U.S.C. § 103 as being unpatentable over Razavi et al. in view of Virtual Router Redundancy Protocol (hereinafter VRRP).

It is incumbent upon the Examiner to prove a *prima facie* case of obviousness (MPEP 2142). To establish a *prima facie* case three basic criteria must be met. First, the prior art reference must teach or suggest all the claim limitations. Second, there must be a reasonable expectation of success. Finally, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference.

#### 1 - The combination does not provide Applicants' claimed invention.

The combination does not provide applicants' claimed invention. As explained above, Razavi et al. does not teach or suggest a *vehicle comprising an active network* for communicating data between devices within the vehicle, and a *device* disposed within the vehicle and having a *vehicle related function*. Also, VRRP merely teaches a passive network and not an active network. Applicants' further submit that the Affidavit under 37 CFR 1.132 further obviates the VRRP reference and its relevance as prior art. Neither Razavi et al. nor

VRRP teach or suggest all of the elements in Applicants' independent claims 1 and 13, let alone dependent claims 8-11 and 15-18. Since neither Razavi et al. nor VRRP, contain at least these features of the Applicants' independent claims, they do not include all of the elements of Applicants' dependent claims 8-11 and 15-18 and therefore cannot anticipate Applicants' dependent claims 8-11 and 15-19.

2 - There is no motivation or suggestion contained in the cited art to combine the teachings of the references.

Before obviousness may be established, the Office Action *must show specifically* the principle, known to one of ordinary skill that suggests the claimed combination. In re Lee, 277 F.3d 1338, 1343 (Fed. Cir. 2002). In other words, the Examiner *must explain* the reasons one of ordinary skill in the art would have been motivated to select the references and to combine them to render the claimed invention. Id. The factual question of motivation is material to patentability and *cannot be resolved based on subjective belief and unknown authority*. Id. at 1344. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under section 103, teachings of references can be combined *only* if there is some suggestion or incentive to do so. ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 1577 (Fed. Cir. 1984). The critical inquiry is whether there is something in the prior art as a whole *to suggest* the desirability, and thus the obviousness, of making the combination. Fromson v. Advance Offset Plate, 755 F.2d 1549, 1556 (Fed. Cir. 1985).

The Examiner asserts that it would have been obvious to combine Razavi et al, and VRRP to arrive at the Applicants' claimed invention. Applicants' respectfully submit that these statements are unsupported assertions expressing *conclusions* and as such are *not* reasons for rejection under 35 U.S.C. § 103(a). Moreover, the test for obviousness must come from, or at least be compatible with, the requirements of 35 U.S.C. § 103(a), stating that: " . . . if the differences between the subject matter sought to be patented and the prior art are such that *the subject matter as a whole* would have been obvious . . ." (emphasis added; 35 U.S.C. § 103(a)). The Office Action's unsupported assertions at most address obviousness of a *difference* between the claimed subject matter and the prior art, and not obviousness of the *claimed subject matter as a whole*, as required by the plain language of 35 U.S.C. § 103(a). The rejection in question can only be based upon a hindsight reconstruction enlightened by Applicants' own disclosure. As the CAFC stated in W.L Gore Associates, Inc. v. Garlock, Inc. (220 USPQ 303, 312-13 (Fed. Cir. 1983)):

To imbue one of ordinary skill in the art with knowledge of the invention in suit, where no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher.

The Examiner has failed to show either a suggestion in the art or a compelling motivation based on sound scientific principles to combine the references and therefore the rejection under 35 U.S.C. § 103(a) is improper and should be withdrawn. Applicants respectfully submit that there is no suggestion to combine the references, and if they could be properly combined, do not lead to the Applicants' invention.

Applicants therefore pray for the reversal of the final rejection and the allowance of the subject application.

#### **Prior Art Not Relied Upon**

The references cited but not relied upon are not believed to anticipate or make obvious applicants' invention.

#### **Summary**

No amendment made was related to the statutory requirements of patentability unless expressly stated herein. No amendment made was for the purpose of narrowing the scope of any claim, unless Applicant has argued herein that such amendment was made to distinguish over a particular reference or combination of references.

The Applicants believe that the subject application, as amended, is in condition for allowance. Such action is earnestly solicited by the Applicants.

In the event that the Examiner deems the present application non-allowable, it is requested that the Examiner telephone the Applicant's attorney or agent at the number indicated below so that the prosecution of the present case may be advanced by the clarification of any continuing rejection.

Accordingly, this application is believed to be in proper form for allowance and an early notice of allowance is respectfully requested.

Please charge any fees associated herewith, including extension of time fees, to 502117.

Respectfully submitted,

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